IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.71 OF 2005

Macleod McCombe (Produce) Ltd. U.K. Petitioner

Vs.

Nandani Bhajipala-Wa Falphalawal
Utpadak Sahakari Sangh Maryadit
& ors. Respondents

WITH

CIVIL REVISION APPLICATION NO.72 OF 2005

BDO Stoy Hayward Petitioner

Vs.

Nandani Bhajipala-Wa Falphalawal
Utpadak Sahakari Sangh Maryadit
& ors. Respondents

Mr.Birendra Saraf with Ms.Priya Bhagwat for petitioners in both the matters.

Mr.G.S.Godbole for Resp.No.1 in both the matters.

CORAM: B.H.MARLAPALLE,J.
June 20, 2005.

ORAL ORDER:

1. Heard Mr.Saraf, the learned counsel for the petitioners and Mr.Godbole, the learned counsel for Respondent no.1. Being aggrieved by the order dated 21-4-2005 passed by the learned learned Civil Judge Senior Division at Jaisingpur below Exhibits 27 and 29 filed in Special Civil Suit No.102 of 2004 (Old

No.155 of 2003) the Defendant Nos. 1 and 4 have filed these two revision applications separately.

2. The defendant no.4 came to be appointed as liquidator for the defendant no.1 which is under liquidation. The plaintiff i.e. present respondent no.1 filed the said suit for the following two main reliefs:

> "(A) a decree of recovery of amount of Rs.7,06,497/- be granted against defendant No.1 to 4 severally & jointly.
>
> (B) Interest at the rate of 18% p.a. be kindly granted upon the outstanding from the date of shipment i.e. 9.4.2000 till the realization of the entire amount with cost of the suit."

The Defendant Nos.1 and 4 individually filed applications at Exhibits 27 and 29 under Order I Rule 10(2) of C.P.C. for striking off their names from the array of defendants. The trial Court held that the defendants did not file Written Statement, the agreements which were the basis for the claim made in

the suit were executed at village Nandani, Tal.Shirol, Dist. Kolhapur in Maharashtra. The goods were sold to defendant no.1 through its agents, defendant nos.2 and 3 from the said village and defendant no.4 came to be appointed as the liquidator and under such circumstances it could not be said that the jurisdiction of the Court is ousted. The Court further proceeded to note that the written contract had taken place within its territorial jurisdiction and, therefore, its jurisdiction was not ousted.

3. The applications submitted by the present applicants were for striking off their respective names and reliance was placed on the orders passed by a Competent Court in U.K. rejecting the recovery claims made by the plaintiff vide order dated 12th March 2003. It was further submitted that the said notice of rejection of proof of debt was an appealable order and, therefore, the applications were required to be allowed.

4. Admittedly the applicants neither raised the issue of territorial jurisdiction nor the principle of res judicata. They simply prayed that their names

should be deleted from the array of defendants which also implied that the suit could proceed against defendant nos.2 and 3 who, as per the plaintiffs, were the agents of defendant no.1. The applications thus submitted were neither here nor there and it was an half-hearted effort to bring the suit proceedings to an end against them selectively. As rightly observed by the trial Court the issue raised in the applications at Exhibits 27 and 29 and other incidental issues could be decided only after the parties lead the evidence. Having regards to the averments made in applications at Exhibits 27 and 29 it cannot be said that the trial Court committed an error apparent on the face of record to cause interference. At the same time the applicants' remedy to apply to decide the issue of maintainability on account of jurisdiction or the doctrine of res judicata cannot be taken away even though the applications at Exhibits 27 and 29 have been rejected.

5. In the premises, the applications are hereby rejected summarily with liberty to the applicants to raise the issue of jurisdiction on both the counts and if such issue is raised the trial Court is

directed to consider the same after the parties lead evidence, along with other issues, on their own merits.

(B.H.MARLAPALLE,J.)